

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHN MYRON BIEL,

Plaintiff,

Case No. 22-cv-766-pp

v.

CITY OF BEAVER DAM,

Defendant.

**ORDER DENYING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYING FILING FEE (DKT. NO. 2)**

On July 5, 2022, the plaintiff—representing himself—filed a complaint, dkt. no. 1, and a motion for leave to proceed without prepaying the filing fee, dkt. no. 2. To allow the plaintiff to proceed without prepaying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i). To qualify to proceed without prepaying the filing fee, a plaintiff must fully disclose his financial condition truthfully under penalty of perjury. See 28 U.S.C. §1915(a)(1) (requiring the person seeking to proceed without prepaying the fee to file “an affidavit that includes a statement of all assets [they] possess[]”).

The plaintiff’s motion states that he has a monthly salary of \$929 and that within the last twelve months he had received \$1,569 in Social Security. Dkt. No. 2 at 2. The motion states that the plaintiff is not married and has no

dependents he is responsible for supporting. Id. at 1. The plaintiff's stated monthly expenses total \$2,075 (\$975 mortgage, \$150 credit card, \$950 other household expenses). Id. at 2-3. The plaintiff owns a 2017 Jeep worth approximately \$16,500. Id. at 3. The plaintiff reports that he owns a home worth approximately \$275,000, with \$110,000 in equity. Id. Finally, the plaintiff states that he has \$1,400 in cash on hand or in an account, and that he has other property of value worth \$12,000 (pontoon boat, riding mower, wildlife/Green Bay Packer art and memorabilia). Id. at 3-4.

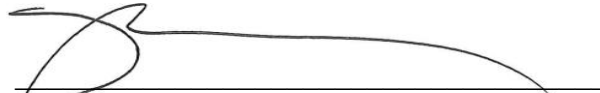
Based on the facts in the plaintiff's affidavit, the court concludes that the plaintiff has the ability to pay the filing fee. Although the plaintiff's monthly expenses exceed his monthly income, he owns non-liquid assets worth tens of thousands of dollars and he has approximately \$1,400 in liquid assets. Id. at 2-4. The court recognizes that due to its delay in ruling on the plaintiff's motion, the plaintiff's financial circumstance may have changed since he filed his motion in July 2022. The court will give the plaintiff the opportunity to file an amended motion in the event that his circumstances have changed and will include with this order a blank request to proceed without prepaying the filing fee; if the plaintiff's circumstances have not changed, the plaintiff must pay the \$402 filing fee before the court will take any further action in the case.¹

¹ The plaintiff should be aware that even if the court grants any amended motion for leave to proceed without prepaying the filing fee, he still will be responsible for paying the filing fee over time. See Rosas v. Roman Catholic Archdiocese of Chi., 748 F. App'x 64, 65 (7th Cir. 2019) ("Under 28 U.S.C. §1915(a), a district court may allow a litigant to proceed 'without prepayment of fees,' but not without ever paying fees."). When a court grants a motion allowing a person to proceed without prepaying the filing fee, it means only that

The court **DENIES WITHOUT PREJUDICE** the plaintiff's motion for leave to proceed without paying the filing fee. Dkt. No. 2. The court **ORDERS** that the plaintiff must either file an amended motion for leave to proceed without prepaying the filing fee or pay the \$402 filing fee in time for the court to *receive* it by the end of the day on **November 30, 2023**. If the court does not receive an amended motion or the full filing fee (or a written explanation of why the plaintiff cannot pay it) by the end of the day on November 30, 2023, the court will dismiss the case on the following business day without further notice or hearing for failure to pay the required filing fee.

Dated in Milwaukee, Wisconsin this 6th day of November, 2023.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge

the person does not have to pay the full filing fee up front; the person still owes the filing fee.